

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

ROBERT A. PAYNE v. STATE OF TENNESSEE

Appeal from the Criminal Court for Davidson County
No. 96-A-311 Seth W. Norman, Judge

No. M2006-02725-CCA-R3-PC - Filed July 31, 2007

The Petitioner, Robert A. Payne, appeals from the order of the trial court summarily dismissing his petition for post-conviction relief. The State has filed a motion requesting that this Court affirm the trial court's denial of relief pursuant to Rule 20, Rules of the Court of Criminal Appeals. The petition was filed outside the statute of limitations and a prior petition for post-conviction relief was previously filed, which was resolved on the merits by a court of competent jurisdiction. Accordingly, the State's motion is granted, and the judgment of the trial court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Trial Court Affirmed Pursuant to
Rule 20, Rules of the Court of Criminal Appeals**

DAVID H. WELLES, J., delivered the opinion of the court, in which THOMAS T. WOODALL and ROBERT W. WEDEMEYER, JJ., joined.

Robert A. Payne, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General, and Victor S. Johnson, III, District Attorney General.

MEMORANDUM OPINION

The Petitioner was convicted by a Davidson County jury of one count of vehicular homicide, two counts of reckless endangerment with a deadly weapon, three counts of reckless aggravated assault, and one count of intentional or knowing aggravated assault. He was sentenced as a Range II offender to an effective sentence of forty-eight years in the Department of Correction. This Court affirmed the Petitioner's convictions and sentences. See State v. Robert Anthony Payne, No. 01C01-9701-CR-00031, 1998 WL 315956 (Tenn. Crim. App., Nashville, June 17, 1998). Our supreme court reversed and dismissed one of the reckless endangerment convictions but otherwise affirmed the judgment of this Court. See State v. Payne, 7 S.W.3d 25 (Tenn. 1999).

Thereafter, the Petitioner timely filed a petition for post-conviction relief on the grounds of ineffective assistance of counsel. After a hearing, the trial court denied that petition. On appeal, this Court affirmed the judgment of the trial court denying post-conviction relief. See Robert Anthony Payne v. State, No. M2001-01994-CCA-R3-PC, 2002 WL 1284283 (Tenn. Crim. App., Nashville, June 11, 2002).

On November 7, 2006, the Petitioner filed his second petition for post-conviction relief, again arguing that he received the ineffective assistance of counsel, that illegal evidence was used against him, and that his sentence was improperly enhanced and therefore illegal. The trial court summarily dismissed the second petition for post-conviction relief because the Petitioner previously filed a petition for post-conviction relief which was resolved on the merits. It is from the order of the trial court dismissing his petition that the Petitioner appeals. We affirm the judgment of the trial court.

A petition for post-conviction relief must be filed within one year of the date that the judgment of conviction becomes final. See Tenn. Code Ann. § 40-30-102(a). It is apparent that the second petition for post-conviction relief was filed well beyond the time allowed by the statute. None of the enumerated exceptions to this time limit apply in this case. See Tenn. Code Ann. § 40-30-102(b). Our legislature has provided that time is of the essence of the right to file a post-conviction petition and that the one-year limitation period is an element of the right to file the petition. See Tenn. Code Ann. § 40-30-102(a). The second petition for post-conviction relief is barred by the statute of limitations, and the trial court could have dismissed the petition for this reason.

In its order dismissing the second petition for post-conviction relief, the trial court stated that the Petitioner was entitled to only one petition for post-conviction relief attacking a single judgment. The trial court noted that the post-conviction statute prevents a petitioner from filing subsequent petitions if the initial petition was dismissed on its merits. We conclude that the trial court did not err by dismissing the petition.

Our post-conviction procedure statute provides that only one petition for post-conviction relief may be filed attacking a single judgment. See Tenn. Code Ann. § 40-30-102(c). The statute further provides that if a prior petition has been filed which was resolved on the merits by a court of competent jurisdiction, a second petition shall be summarily dismissed. See id.

In his brief, the Petitioner asks that this Court rule on the merits of each ground presented on appeal. Because the petition is barred by the statute of limitations and because a prior petition has previously been resolved on the merits, we decline to address the claims asserted by the Petitioner.

For the reasons stated herein, we conclude that the trial court did not err by summarily dismissing the petition for post-conviction relief. Accordingly, it is ordered that the State's motion is granted. The judgment of the trial court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

DAVID H. WELLES, JUDGE